

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:11-CR-227-1BO

UNITED STATES OF AMERICA)
)
) ORDER
)
JEFFREY DAVIS)

This matter is before the Court on Defendant Jeffrey Davis' plea of guilty entered on October 25, 2011. On October 26, 2011, the Court directed the parties in this matter to file briefs addressing whether Mr. Davis' earlier conviction of possession of a firearm by a convicted felon remains a predicate felony in light of *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011) (en banc). In addition to his brief, Defendant also filed a Motion to Withdraw Guilty Plea on December 28, 2011.

As the Government has noted, the Fourth Circuit has held that the subsequent vacation of a predicate conviction does not justify relief from a later conviction based upon the vacated predicate conviction. *United States v. Kahoe*, 134 F.3d 1230, 1231-32 (4th Cir. 1998) (citing *Lewis v. United States*, 455 U.S. 55 (1980)). Accordingly, even if Mr. Davis' prior conviction for felon in possession of a firearm was to be vacated in light of *Simmons*, that would not change the fact that Mr. Davis was a convicted felon at the time he possessed a firearm in the instant matter. Mr. Davis' Motion to Withdraw Guilty Plea is therefore DENIED. Mr. Davis will proceed to sentencing in this matter on the Court's January 2012 term.

SO ORDERED, this 8 day of December, 2011.

Terrence W. Boyle
TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE